IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. EVANS LAFFYATTE PITTMAN, Appellant.	2 CA-CR 2005-0330 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20051455

Honorable Michael J. Cruikshank, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Alan L. Amann — Tucson
Attorneys for Appellee

Law Office of David Alan Darby
By David Alan Darby — Tucson
Attorneys for Appellant

P E L A N D E R, Chief Judge.

¶1 After a jury trial, appellant Evans Laffyatte Pittman was convicted of six counts of armed robbery, six counts of aggravated assault, five counts of aggravated robbery, four counts of kidnapping, and two counts of participating in a criminal syndicate. The trial

court sentenced him to a combination of concurrent and consecutive prison terms, including three consecutive terms of life in prison with no possibility of release for twenty-five years. Although the convictions stemmed from a spree of seven robberies committed between December 2003 and February 2004, on appeal Pittman argues only that the evidence was insufficient to sustain three of his convictions and that the trial court erred in denying his *Batson*[1] challenge to the state's peremptory strikes of four prospective jurors. Finding no reversible error, we affirm.

I. Sufficiency of Evidence

¶2 Pittman first argues insufficient evidence existed to support two of the kidnapping convictions and one of the aggravated assault convictions. In determining whether sufficient evidence supports a conviction, the evidence is "'viewed in the light most favorable to sustaining the conviction and all reasonable inferences will be resolved against a defendant.'" *State v. Haas*, 138 Ariz. 413, 419, 675 P.2d 673, 679 (1983), *quoting State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981); *see also State v. Miles*, 211 Ariz. 475, ¶ 23, 123 P.3d 669, 675 (App. 2005).

¶3 "Every conviction must be based on 'substantial evidence.'" *Miles*, 211 Ariz. 475, ¶ 23, 123 P.3d at 675, *quoting* Ariz. R. Crim. P. 20(a), 16A A.R.S. "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996); *see also State v. Terrazas*, 189 Ariz. 580, 586, 944 P.2d 1194,

[1]*Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986).

1200 (1997). We will reverse a conviction for insufficient evidence "only if 'there is a complete absence of probative facts to support [the trier-of-fact's] conclusion.'" *State v. Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d 391, 394 (App. 2000), *quoting State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988); *see also State v. Alvarado*, 178 Ariz. 539, 541, 875 P.2d 198, 200 (App. 1994).

A. Kidnapping convictions

¶4 Pittman argues there was insufficient evidence to sustain the kidnapping convictions involving victims Rafael Hernandez and Ramiro Hernandez, brothers and employees of Raliberto's Mexican restaurant. To establish a kidnapping charge, the state must prove that the defendant knowingly restrained another person with the intent to, inter alia, "aid in the commission of a felony" or "[p]lace the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person." A.R.S. § 13-1304(A)(3), (A)(4).

¶5 Pittman maintains that, even resolving all inferences against him, "it is clear Rafael and Ramiro Hernandez were not restrained in any way." We disagree. "'[T]he essence of the crime of kidnapping . . . is . . . the unlawful compulsion to stay somewhere or go somewhere against the victim's will.'" *State v. Ring*, 131 Ariz. 374, 378, 641 P.2d 862, 866 (1982), *quoting State v. Pickett*, 121 Ariz. 142, 146, 590 P.2d 16, 20 (1978) (omission in *Ring*). Both victims testified Pittman had entered the restaurant with a gun, pointed it directly at Ramiro, and demanded money. There also was testimony Pittman had "moved [Ramiro] and [Rafael] around the store at gunpoint" and had motioned "for [Rafael]

to move to one side" in order to gain access to the cash registers. That evidence supports an inference that Pittman had restrained Rafael and Ramiro with the intent to aid in the commission of the robbery or to place them in reasonable apprehension of imminent physical injury. *See* § 13-1304(A)(3), (A)(4).

¶6 Although Pittman concedes "the gun was pointed [at] Ramiro," he argues Ramiro "moved no more than five o[r] ten steps, and not for the purposes required to establish Kidnapping." Again, we disagree. "The essence of kidnap is not the distance the victim is transported but the unlawful compulsion against the will to go somewhere." *State v. Williams*, 111 Ariz. 222, 224, 526 P.2d 1244, 1246 (1974); *see also State v. Linden*, 136 Ariz. 129, 136, 664 P.2d 673, 680 (App. 1983). Here, a reasonable juror could have concluded that Rafael and Ramiro had moved around the restaurant against their will based solely on Pittman's demands as he pointed a gun in their direction. Accordingly, substantial evidence supports these two kidnapping convictions.

B. Aggravated assault conviction

¶7 Next, Pittman argues there was insufficient evidence to sustain the aggravated assault conviction involving victim Eric Noriega, who did not testify at trial. "To be guilty of aggravated assault, 'the defendant need only intentionally act using a deadly weapon or dangerous instrument so that the victim is placed in reasonable apprehension of imminent physical injury.'" *State v. Wood*, 180 Ariz. 53, 66, 881 P.2d 1158, 1171 (1994), *quoting State v. Valdez*, 160 Ariz. 9, 11, 770 P.2d 313, 315 (1989); *see also* A.R.S. §§ 13-1203(A)(2), 13-1204(A)(2).

¶8 Noriega was a customer at a Quik-Mart store when it was robbed. The state introduced a photograph taken by a store camera that showed Pittman pointing a gun at Noriega. Further, Brandy Law, the only Quik-Mart employee who had been working during the robbery, testified that Noriega had been threatened "to empty out all his pockets [and] give [the robbers] all his jewelry."

¶9 Despite that evidence, Pittman argues "[n]o evidence was presented that a gun was ever pointed at Noriega, or that he was in reasonable apprehension of imminent physical injury." But, "[e]ither direct or circumstantial evidence may prove the victim's apprehension. There is no requirement that the victim testify to actual fright." *Wood*, 180 Ariz. at 66, 881 P.2d at 1171. The aforementioned evidence of Pittman having pointed a gun directly at Noriega, coupled with testimony that Noriega had been threatened, supports the jury's finding that Pittman had used a deadly weapon and placed Noriega in reasonable apprehension of imminent physical injury.

II. *Batson* challenges

¶10 Pittman also argues "[t]he trial court erred by denying [his] *Batson* challenge." "When reviewing a trial court's ruling on a *Batson* challenge, we defer to its factual findings unless clearly erroneous, but review its legal determinations de novo." *State v. Gay*, No. 2 CA-CR 2005-0306, ¶ 16, 2007 WL 155164 (Ariz. App. Jan. 23, 2007); *see also State v. Lucas*, 199 Ariz. 366, ¶ 6, 18 P.3d 160, 162 (App. 2001).

¶11 A party may not exercise a peremptory jury strike solely on the basis of gender, race, or ethnicity. *See Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986);

State v. Purcell, 199 Ariz. 319, ¶ 22, 18 P.3d 113, 119 (App. 2001). A *Batson* challenge involves a three-part test. *See State v. Canez*, 202 Ariz. 133, ¶ 22, 42 P.3d 564, 577 (2002). First, the challenging party "must make a prima facie showing of discrimination." *Id.; see also State v. Lucas*, 199 Ariz. 366, ¶ 7, 18 P.3d 160, 162 (App. 2001). Second, if such showing is made, the striking party must offer a race-neutral basis for the strike. *Canez*, 202 Ariz. 133, ¶ 22, 42 P.3d at 577; *see also Lucas*, 199 Ariz. 366, ¶ 7, 18 P.3d at 162. The striking party's race-neutral explanation need not be persuasive or even plausible. *Purkett v. Elem*, 514 U.S. 765, 768, 115 S. Ct. 1769, 1771 (1995). And, unless a discriminatory intent is inherent in the explanation, the reason offered will be deemed neutral. *Id.* Finally, if a neutral explanation is offered, "the trial court must determine whether the challenger has carried its burden of proving purposeful racial discrimination." *Canez*, 202 Ariz. 133, ¶ 22, 42 P.3d at 577; *see also Rice v. Collins*, 546 U.S. 333, ___, 126 S. Ct. 969, 973-74 (2006) (citing and discussing three prongs of *Batson* challenge).

¶12 After jury selection, Pittman challenged the state's peremptory strikes of three Hispanic venirepersons (Garcia-Lopez, Osorio, and Reynoza) and one Native American prospective juror (Begay). The trial court "ma[d]e a prima facie finding" of discrimination, prompting the prosecutor to offer race-neutral explanations for striking the four prospective jurors. In response, the prosecutor stated he had struck Garcia-Lopez because she had "indicated she ha[d] two nephews presently in the Department of Corrections" with whom she was close and had "seemed somewhat emotional [when] speaking about her nephews." The prosecutor stated he had struck Osorio because he "ha[d] a criminal arrest in his

history" and because his "slovenly" appearance indicated he did not have "a great deal of respect for the Court." Regarding Reynoza, the prosecutor indicated that he "tend[ed] to strike people that . . . have a lack of life experience" and had struck Reynoza because of his young age. Finally, the prosecutor responded that he had struck Begay because he "felt she would have the propensity to have a great deal of sympathy" for criminal defendants, having "testified for a criminal defendant [that] year" and having "a brother-in-law that ha[d] been convicted of drug trafficking."

¶13 The trial court found the foregoing reasons "sufficiently race neutral" and permitted the peremptory strikes. On appeal, Pittman asserts "the trial court's ruling was clearly erroneous" because "the state's explanation was unsatisfactory to overcome its burden to establish race neutral reasons." We disagree. As mentioned, unless a discriminatory intent is inherent in the explanation, the reason offered will be deemed neutral. *See Purkett*, 514 U.S. at 768, 115 S. Ct. at 1771. Here, the prosecutor offered explanations that were wholly unrelated to race.

¶14 Further, because the third prong of a *Batson* challenge involves a trial court's assessment of the striking party's credibility, we give much deference to that court's decision. *See Gay*, 2007 WL 155164, at ¶ 17 (finding that trial court's decision is given due deference because "[d]uring the third step, the trial court evaluates the credibility of the state's proffered explanation, considering factors such as 'the prosecutor's demeanor; . . . how reasonable, or how improbable, the explanations are; and . . . whether the proffered rationale has some basis in accepted trial strategy'"), *quoting Miller-El v. Cockrell*, 537

U.S. 322, 339, 123 S. Ct. 1029, 1040 (2003) (omissions in *Gay*); *see also State v. Newell*, 212 Ariz. 389, ¶ 54, 132 P.3d 833, 845 (2006). Because we conclude the trial court did not misapply the law and because we must defer to the trial court's findings when assessing its ruling, we find no *Batson* error. *See Lucas*, 199 Ariz. 366, ¶ 6, 18 P.3d at 162.

DISPOSITION

¶15 Pittman's convictions and sentences are affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge